PUBLIC PARTICIPATION RESPONSIVENESS SUMMARY

FOR

RULEMAKING ON CHAPTERS 60, 62, 63, AND 64

DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL SERVICES DIVISION

JANUARY 27, 2009

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RESPONSIVENESS SUMMARY

Introduction

This is a summary of and response to the comments received in response to amendments proposed for IAC 567 Chapters 60, 62, 63, and 64. This document also contains recommendations for final action by the Environmental Protection Commission (EPC). The proposed amendments were published as a Notice of Intended Action (NOIA) in the Iowa Administrative Bulletin on September 10, 2008 as **ARC 7152B**. The Administrative Rules Review Committee (ARRC) requested that the Department perform an informal Regulatory Analysis of the proposed amendments at their October 12, 2008 meeting. The informal regulatory analysis was presented to the ARRC on December 10, 2008.

The amendments as proposed in the Notice would:

For Chapter 60:

- Add definitions and new permit application forms
- Clarify language concerning permit applications

For Chapter 62:

- Clarify the procedure for calculating 30-day average percent removal
- Include language allowing the use of TMDLs to derive permit limits
- Add language on effluent reuse

For Chapter 63:

- Replace the language on bypasses and include language on sanitary sewer overflows
- Update monitoring requirements for all NPDES permits by increasing the base monitoring requirements and adding new monitoring requirements
- Remove the monitoring table for inorganic waste discharges and replace it with a rule-referenced document

For Chapter 64:

- Clarify the language regarding the issuance and denial of operation and NPDES permits
- Clarify the public notice requirements for NPDES permits
- Add language on public requests to amend, revoke and reissue, or terminate permits
- Add language on the determination of significant non-compliance

Three public hearings were held with notice of the hearings sent to various individuals, organizations, and associations, and to statewide news network organizations. The hearings were held on October 7, 8, and 9, 2008. Written comments were received through October 10, 2008.

One hundred seventy persons or groups provided oral or written comments on the proposed amendments during the public comment period. The responsiveness summary addresses all of the comments received. The comments received are addressed below in terms of the issue involved. The commentators' names are listed in the Appendix.

ISSUE: Comments in Support of the Proposed Rules

Comments:

A few comments were received in support of the proposed amendments. They are paraphrased below.

1. In general, the changes to the rules are appropriate and we support them
2. We support the DNR in better protecting our states' waterways by revising NPDES monitoring requirements
3. By adopting rules that upgrade antiquated monitoring requirements, the department will be better positioned to appropriately regulate wastewater discharges

Discussion:

We appreciate the comments in support of the proposed monitoring requirements. The final monitoring updates the minimum monitoring requirements for organic waste dischargers by increasing some of the current requirements and by adding new monitoring. The increase in the current monitoring allows for better operational control and compliance monitoring, thereby ensuring that all facilities will meet permit requirements and are properly operated.

Recommendation:

It is recommended that the EPC adopt the final amendments to Chapters 60, 62, 63, and 64.

ISSUE: Definitions of Bypass and Sanitary Sewer Overflow

(Chapter 60)

Comments:

Several comments were received in opposition to the proposed definitions for bypasses and sanitary sewer overflows (SSOs). These comments are paraphrased below.

1. The bypass definition differs from the definition in the Code of Federal Regulations
2. Bypasses should not be delineated at the headworks of a treatment facility
3. The bypass definition and bypass prohibition language imply that DNR would allow complete diversions around the wastewater treatment facility
4. SSO definition implies that an SSO would include wastewater backups into buildings that are caused by the municipal collection system, and this is an extension of NPDES permitting activities
5. It is problematic that the department is proposing to expand its jurisdiction to hold municipalities responsible for overflows that do not enter any receiving waters and/or that occur from private property
6. The definition would declare that overflows that do not originate from municipal sewers, such as basement backups, could be subject to a penalty for every instance whether or not they are possible to prevent
7. Bypass definition should be clarified concerning internal diversions; the definition is ambiguous as to whether "redundant treatment" is intended only to apply to maintenance diversions or to the design of the treatment works
8. The word "original" should be removed from in front of the word "design" in the bypass definition
9. Bypass definition should be clarified to indicate that bypasses that are undertaken for essential maintenance that do not cause a violation of effluent limits are allowable
10. The last sentence of the bypass definition is ambiguous; the term "partially treated waste" is unclear and blending should not be prohibited
11. The final sentence of the bypass definition potentially precludes the operation of some treatment facilities as designed

Discussion:

The proposed bypass and SSO definitions in the final amendments have been changed from those in the NOIA to address the above comments. The SSO definition has been combined with the bypass definition, as the final amendments do not reference SSOs. SSOs are no longer included in the proposed final amendments, as U.S. EPA has not yet modified the Code of Federal Regulations to specifically discuss SSOs. As a result of this combination, bypasses are no longer delineated at the headworks of the treatment facility, as noted in comment #2. The proposed removal of the language delineating bypasses at the headworks also eliminates the implication that a complete diversion around a wastewater treatment facility is not a bypass, as noted in comment #3.

The bypass definition in the proposed final amendments continues to differ from the definition in the Federal Code of Regulations, as noted in comment #1. For clarification purposes, the proposed bypass definition for the final amendments lists four types of overflows that will not be considered bypasses. The

inclusion of these four types of overflows does not result in a more stringent definition for bypass than that in the federal code.

The language in the SSO definition from the NOIA that states that SSOs do not include wastewater backups into buildings that are caused in the building lateral or private sewer line is proposed to be moved to the bypass definition. An overflow caused in a building lateral or private sewer line will not be considered a bypass and will not need to be reported to the department. However, overflows caused in the municipal collection system will be considered bypasses because such overflows are the responsibility of the collection system owner and they may endanger human heath or the environment. The department agrees with the commentors in comment #4 that this is an extension of the department's authority. The proposed final amendments will require the reporting of any bypass that may endanger human heath and the environment because either bypasses occurring in the collection system will not have any effluent limitations or it will be unknown whether there is an exceedance of an effluent limitation. In order for the department to adequately address problems created by bypasses, it is important to have a detailed description of all bypasses that may pose a risk to human heath or the environment, whether or not the bypass has exceeded an effluent limitation in the permit.

The department agrees with comments #6, 7, 8, and 9. The bypass definition in the NOIA did need clarification regarding internal bypasses. The bypass definition proposed in the final amendments separates internal operational waste stream diversions that are part of the design of the treatment works and maintenance diversions where redundancy is provided to clarify that redundancy is not necessary for internal operational waste stream diversions. The word "original" has been removed from in front of the word "design" in the proposed definition, as it was not clear what would be considered an original design. Internal operational waste stream diversions that are included in an approved design of the treatment facility at any time during the life of the facility will not be considered bypasses. Also, maintenance diversions where redundancy is provided will not be considered bypasses.

The bypass definition proposed in the final amendments does not imply that bypasses that are undertaken for essential maintenance are not allowable, as stated in comment #7. A bypass undertaken to perform maintenance of a treatment facility is allowable; however, the department needs to be informed of such a bypass where redundancy is not provided according to the final amendments proposed for 63.6(2), Anticipated Bypass. The permittee needs to notify the department of a maintenance bypass where redundancy is not provided because it could result in the discharge of partially treated waste that may or may not meet the NPDES permit limits.

The last sentence of the NOIA bypass definition that stated bypasses include internal waste stream diversions that result in partially treated waste being discharged, regardless of whether the partially treated waste is blended with treated waste before discharge, has been removed from the proposed final amendments. We agree with comments #10 and 11 which that this sentence is ambiguous and that the Federal Code of Regulations does not prohibit blending.

Recommendation:

It is recommended that the EPC adopt the modified definition of bypass as noted in the final amendments to Chapter 60, and exclude the definition of SSO that was proposed in the NOIA.

ISSUE: Definition of Discharge of a Pollutant

(Chapter 60)

Comments:

Several comments were received from owners and operators of animal feeding operations that indicated concern with the proposed definition "discharge of a pollutant". The comments are paraphrased below.

1. The definition should not include agricultural storm water
2. The definition should not be expanded to include livestock farms
3. Soil conservation and field tile drainage should not be included in the definition

4. The second sentence of the definition could be misinterpreted to expand the definition of point source to include USDA conservation practices, soil conservation practices, and soil drainage infrastructure
5. The definition should not include the term "waters of the state" as this created the potential for unintended consequences, such as requiring permits for persons washing out a grain bin or washing a car on their property

Discussion:

The definition "discharge of a pollutant" means any addition of any pollutant or combination of pollutants to navigable waters or waters of the state from any point source. The definition of point source states that return flows from irrigated agriculture or agricultural storm water runoff are not point sources. As the discharge of a pollutant is an addition of a pollutant from any point source, and return flows from irrigated agriculture or agricultural storm water runoff are not point sources, it follows that return flows from irrigated agriculture or agricultural storm water runoff are not a discharge of a pollutant. Thus, agricultural storm water and any USDA conservation practices consisting of return flow from irrigated agriculture are not being added to the definition of discharge of a pollutant.

It is appropriate for the definition of discharge of a pollutant to include the term "waters of the state". The department regulates discharges to waters of the state as well as discharges to navigable waters, so both terms need to be included when defining discharge of a pollutant. Any unintended consequences of this definition will be dealt with either in department Policy Implementation Guidance documents or in future rulemaking actions.

Recommendation:

It is recommended that the EPC adopt the definition "discharge of a pollutant" as noted in the NOIA.

ISSUE: Minor Permit Amendments

(Chapter 60)

Comments:

A few comments were received that indicated that the proposed rules did not include the requirement that minor permit modifications be made with the consent of the permittee.

Discussion:

40 CFR 122.63 indicates that a minor modification (amendment) may be made to a permit upon the consent of the permittee. This language was not included in the definition of minor permit amendment in the NOIA. The definition of minor permit amendment is proposed to be modified in the final amendments to indicate that minor amendments are those made with the consent of the permittee.

Recommendation:

It is recommended that the EPC adopt the modified definition of minor permit amendment as noted in the final amendments.

ISSUE: Definition of Pass Through

(Chapter 60)

Comments:

A few comments were received in opposition to the inclusion of the language "or contribute to" in the definition of pass through proposed in the NOIA.

Discussion:

The proposed definition of pass through in the NOIA stated "a discharge which, alone or in conjunction with a discharge or discharges entering the treatment facility from other sources, exits a POTW or semipublic sewage disposal system in quantities or concentrations which cause or contribute to a violation…" The definition at 40 CFR 403.3 does not include the language indicating a concentration that contributes to a violation will be considered pass through. As the language "or contribute to" would be more stringent than the Code of Federal regulations, the department has decided to propose the removal of this language from the definition of pass through in the final amendments to Chapter 60.

Recommendation:

It is recommended that the EPC adopt the modified definition of pass through as noted in the final amendments to Chapter 60.

ISSUE: Definition of Significant Industrial User (SIU)

(Chapter 60)

Comments:

A few comments were received in opposition to the fourth criteria in the definition of Significant Industrial User (SIU) included in the NOIA. The comments indicated that SIUs should be designated by the treatment facility, rather than by the department. The comments on the SIU definition also indicated that the definitions should allow pretreatment municipalities to designate a categorical industrial user as a non-SIU.

Discussion:

The fourth criterion in the NOIA definition of SIU states that an industry can be designated by the department as a significant industrial user on the basis that the contributing industry, either singly or in combination with other contributing industries, has a reasonable potential for adversely affecting the operation of or effluent quality from the POTW or for violating any pretreatment standards or requirements. This criterion is a re-wording of the fourth criterion in the current Major Contributing Industry (MCI) definition in 567 IAC Chapter 60. The MCI definition was replaced by the SIU definition in the NOIA. The NOIA language is not more stringent than the existing language. This language will not be changed in the final amendments, as the department believes that as the regulatory agency, it should continue to have the discretion to designate industries as SIUs, rather than the treatment facility.

The final paragraph of the SIU definition in the NOIA indicated that the department may, at any time on its own initiative or in response to a request received from an industrial user or POTW, determine that an industrial user is not a significant industrial user. Thus, a categorical industry may be designated as a non-SIU by the department. This language will not be changed in the final amendments for the same reason that the fourth criterion of the SIU definition will not be changed; the department believes that as the regulatory agency, it should have the discretion to designate industries as non- SIUs, rather than the treatment facility.

Recommendation:

It is recommended that the EPC adopt the definition "significant industrial user" as noted in the NOIA.

ISSUE: Submission of Permit Applications

(Chapter 60)

Comments:

A few comments were received that indicated language should be added to the subrule on permit applications indicating that a publicly-owned treatment works (POTW) is allowed to submit a renewal permit application later than 180 days before the expiration of a permit with the permission if the director. This is allowed by 40 CFR 122.21(d)(1).

Discussion:

The department agrees with the commentors. The sentence "for a POTW, permission to submit an application at a later date may be granted by the director" is proposed to be added to the subrule discussing complete permit applications, as required by the Code of Federal Regulations.

Recommendation:

It is recommended that the EPC adopt the modified language in subrule 60.4(2)"a"(1) and subrule 64.8(1)"a" as noted in the final amendments.

ISSUE: Requests to Modify a Schedule of Compliance

(Chapter 60)

Comments:

A few comments were received concerning the proposed changes to the section concerning schedules of compliance in Chapter 60. They are paraphrased below.

1. Requests to amend a permit schedule of compliance should be made 30 days in advance, rather than 60 days in advance as indicated in the current rule
2. Does the language "cause may include" indicate that other adequate cause may exist, or does it imply that the listed causes are not sufficient?

Discussion:

In the NOIA, the department proposed to require the submittal of a request to amend compliance schedule 60 days in advance to allow for adequate time to amend a permit to change a compliance schedule. If final compliance dates (such as complete construction or comply with final effluent limits) must be changed, the amendment is considered a major permit amendment that must be placed on public notice. As the public notice period extends for 30 days after the publication of the notice, it is impossible for the department to amend a compliance schedule in time for the facility to meet the new compliance dates. This would result in noncompliance with the original compliance schedule, even if the permit was in the process of being amended. In order to prevent facilities form being in noncompliance with their compliance schedule when their permit is being amended, the period of time for the submittal of an amendment request was changed from 30 to 60 days in the NOIA, as noted in comment #1.

The department agrees that under certain circumstances, it may be difficult for a facility to submit a request to amend a compliance schedule 60 days in advance. It is important for a facility to submit a request to amend a compliance schedule as soon as they are aware that a compliance date will not be met. If a facility must delay such a request until it is too late for the department to amend the permit before the next compliance date, the facility must accept the consequences of being in violation of their compliance schedule. In light of the commentors objections, the department has decided to leave the language as it is in the current rule. The proposed final amendment language will state that a request to amend a compliance schedule must be made at least 30 days prior to the next scheduled compliance date, rather than 60 days.

In the NOIA, the department added the word "may" to the sentence discussing causes where extensions may be granted for compliance schedules, as noted in comment #2. The existing language states "cause includes…" and the proposed language changes that phrase to "cause may include…" This change was made to indicate that the listed causes may not be the only reasons for granting an extension of a compliance schedule. The NOIA language does not suggest that the listed causes may not be sufficient to grant an extension of a compliance schedule.

Recommendation:

It is recommended that the EPC adopt the modified language in subrule 60.4(2)*b*(1) as noted in the final amendments.

ISSUE: Translation of Wasteload Allocations (WLAs) to Water Quality Based Effluent Limits (WQBELs)
(Chapter 62)

Comments:

A few comments were received that indicated concern with the proposed sentence in 62.8(2) which states that the translation of WLAs to WQBELs shall use Iowa permit derivation methods, as described in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on June 16, 2004 (Support Document-IWQMP). These comments are paraphrased below.

1. The proposed sentence will incorporate of all of the procedures in the Supporting Document-IWQMP, and we object to such an incorporation of the Supporting Document-IWQMP procedures
2. The implementation of established TMDL WLAs through effluent limits is unreasonable, arbitrary, and capricious

Discussion:

The sentence form the NOIA stating that WLAs are translated to WQBELs using the Iowa permit derivation methods in the Supporting Document-IWQMP is a codification of current procedure. The commentors objected to the NOIA sentence because, in their opinion, it could arbitrarily restrict the ability of the department to provide more reasonable permit limits that would meet all applicable standards. The NOIA sentence will restrict the ability of the department to use permit derivation methods that are not included in the Supporting Document-IWQMP. This restriction is intentional, as any alternative methods for the derivation of permit limits would need to go through the rulemaking process and be added to the Support Document-IWQMP. The final amendment language will not be changed as a result of comment #1.

The department does not agree with the commentators of comment #2 that the implementation of established TMDL WLAs through effluent limits is unreasonable, arbitrary, and capricious. The implementation of TMDLs through effluent limits is in accordance with the goal of the Clean Water Act, and the department will continue to include effluent limits from TMDL WLAs in NPDES permits.

Recommendation:

The department recommends that the EPC adopt the sentence on the translation of WLAs to WQBELs in subrule 62.8(2) as noted in the NOIA.

ISSUE: Pretreatment Streamlining Regulations
(Chapter 62)

Comments:

A few comments were received that indicated the department should adopt the federal pretreatment streamlining regulations if we had not already done so.

Discussion:

The federal pretreatment streamlining regulations were adopted by reference in 567 IAC Chapter 62 and were effective on November 15, 2006.

Recommendation:

No rule modifications are recommended.

ISSUE: Proposed Influent Sampling for 5-day Biochemical Oxygen Demand (BOD_5) and Effluent Sampling for 5-day Carbonaceous Biochemical Oxygen Demand ($CBOD_5$)

(Chapters 62 and 63)

Comments:

A few comments were received that indicated the monitoring for BOD_5 and $CBOD_5$ as proposed in Chapters 62 and 63 is not appropriate. These comments are paraphrased below.

1. The proposed rules should not mandate the use of $CBOD_5$ for effluent sampling in lieu of BOD_5
2. The proposed rules should not require that 5 units be added to the effluent $CBOD_5$ when calculating 85% removal
3. BOD_5 is not an appropriate design parameter or parameter for use in evaluating treatment process performance; the raw waste (influent) monitoring parameter of BOD_5 should be replaced with $CBOD_5$

Discussion:

The department has proposed in the NOIA that BOD_5 be used for influent sampling and $CBOD_5$ be used for effluent sampling for all organic waste dischargers. Comment #1 disagrees with this requirement, and the commentors suggested that $CBOD_5$ should only be substituted for BOD_5 at the request of the permittee. Currently, NPDES permits for organic waste dischargers require effluent sampling of $CBOD_5$. The NOIA requirement that mandates the use of $CBOD_5$ for effluent testing is a codification of current procedures. In addition, the department feels that the minimum monitoring parameters for organic waste dischargers should be the same. However, the proposed language in the NOIA for section 63.3(5) states that the minimum monitoring requirements may be modified when requested by the permittee, allowing facilities who wish to test for BOD_5 to submit a variance request.

Comment #2 indicates that the rules should not require the addition of 5 units to the effluent $CBOD_5$ value to calculate 85% removal. The department agrees that the 5 unit difference between $CBOD_5$ and BOD_5 may not be accurate in all cases, and the amendments as proposed in the NOIA state that site-specific information on the relationship between BOD_5 and $CBOD_5$ shall be used in lieu of the 5-unit relationship if such information is available.

After careful consideration of EPA's guidance on and discussions of BOD_5 and $CBOD_5$, of the comments from department and stakeholder engineers, and of the scientific literature concerning the influent and effluent sampling of BOD_5 and $CBOD_5$, the department has decided to remain with the NOIA proposal of sampling of BOD_5 influent and $CBOD_5$ effluent. The department acknowledges that there has been research indicating that $CBOD_5$ is an appropriate measure of influent waste strength, and that $CBOD_5$ could be used for influent waste sampling, as indicated in comment #3. However, there is also research indicating that BOD_5 is the appropriate measure for influent waste strength. The scientific research regarding the effectiveness of both BOD_5 and $CBOD_5$ for influent and effluent wastewater is ambiguous at this time. If new guidance from EPA or new research indicates that one parameter should be used in place of the other for influent or effluent wastewater, the department will reopen the monitoring tables in Chapter 63. Until that time, the final amendments will recommend sampling of BOD_5 for influent wastewater and $CBOD_5$ for effluent wastewater.

Recommendation:

It is recommended that the EPC adopt the BOD_5 and CBOD5 language and monitoring in Chapters 62 and 63 as proposed in the NOIA.

ISSUE: Effluent Reuse on Golf Courses

(Chapter 62)

Comments:

A few comments were received regarding the new subrule on Chapter 62 of effluent reuse for golf course irrigation. These comments are paraphrased below.

1. "Treated final effluent" does not appear to be defined in terms of water quality to enable a disinfection system to be selected irrespective of the treatment technology chosen
2. Subrule 62.10(1)"a"(1) limits disinfection technology to chlorine only; this is restrictive to UV and other disinfection technologies
3. Subrule 62.10(1)"a"(2) appears to define the disinfection required for treated final effluent where site facilities exist for storage of the disinfected effluent
4. Without a disinfection target it is not possible to correctly size a disinfection system

Discussion:

The term "treated final effluent" as used in the NOIA means effluent that has been treated at a wastewater treatment facility. This term does not need to be defined as noted in comment #1. This proposed subrule describes what must occur after effluent is treated appropriately with any available technology at a wastewater treatment facility. It does not limit the type of disinfection technology that can be used at a treatment facility; it states that either a minimum total residual chlorine level must be maintained or the disinfected effluent shall be held in a retention pond. One or the other of these conditions is necessary. If one condition cannot be met with the treatment technology available at the wastewater treatment facility, the other should be met. The design and sizing of a disinfection system is depended upon the type of wastewater treatment facility and the water quality standards. The disinfection target for a treatment facility should always be the final effluent limit, regardless of whether or not the treated final effluent is used for golf course irrigation.

Recommendation:

It is recommended that the EPC adopt the effluent reuse language in subrule 62.10(1) as proposed in the NOIA.

ISSUE: Bypasses, Sanitary Sewer Overflows, and Upsets

(Chapter 63)

Comments:

Several comments were received in opposition to the proposed regulatory language for bypasses, SSOs, and upsets. These comments are paraphrased below.

1. SSO language is based on draft guidance from EPA, not on federal regulations
2. Elimination of all SSOs cannot be reasonably expected
3. The effect of the SSO rules would be to make continuous compliance practically impossible
4. Municipalities who designed their collection systems in accordance with state design standards would now be in violation and subject to liability due to the proposed SSO language
5. Costs of SSO and blending prohibition would be astronomical
6. Proposed SSO language does not take the wastewater design standards into account
7. An occurrence of a bypass or upset does not provide the state authority to unilaterally impose new requirements on the permittee
8. The department cannot precondition the upset defense to compliance with other requirements
9. Municipalities should work cooperatively with the department but the department should not have a blank check to impose new requirements
10. Public notice should not be required for bypasses, SSOs, and upsets
11. Bypass rule could eliminate combined sewer overflow (CSO) related bypassing
12. Voicemail reporting should be sufficient if direct communication with department staff is not achievable

13. We cannot support the requirement that operators notify DNR within twelve hours unless the rain event exemption is reinstated as there is no a solution to a bypass caused by excessive rainfall
14. DNR should exempt rain bypass events from the proposed additional reporting requirements
15. The proposed rule says that bypasses and SSOs are prohibited, but the exemptions in the rule essentially counteract the prohibition
16. There are far too many bypasses and SSOs and the proposed rule does not address this situation
17. We support the language describing the process to be used by operators when anticipating a bypass; the language provides a good framework for operators to utilize

Discussion:

The department, after consideration of the Federal Code of Regulation and EPA guidance on SSOs, has decided to eliminate the references to SSOs in the bypass language in the proposed final amendments. EPA has not yet modified the Code of Federal Regulations to specifically discuss SSOs, so there is no need to discuss them in the department's rules at this time. The elimination of the SSO language addresses several of the comments noted above.

As noted in comments #7, 8, and 9, some commentors expressed concern with the provisions in 63.6(4), 63.6(5), 63.3(6) which require permittees to perform additional monitoring, sampling or analysis requested by the department, comply with the instructions of the department intended to minimize the effects of a bypass or upset, and report any subsequent findings or additional information requested by the department. The department intended in the NOIA to require additional monitoring, sampling, and analysis only of the bypass or upset rather than implying that any monitoring, sampling, or analysis may be requested by the department. The NOIA language has been changed in the proposed final amendments to indicate that the additional monitoring, sampling, and analysis is of the bypass or upset only. The additional monitoring, sampling, or analysis of a bypass or upset is necessary to determine the effect of the bypass or upset upon human heath and the environment. Without sampling data, it is only possible to guess at the effect of a bypass or upset. For these reasons, the final amendments propose to include the monitoring, disinfection, and cleanup requirements for bypasses and will precondition the upset defense to comply with these requirements.

When the effects of a bypass could be detrimental to human heath or the environment, additional disinfection and cleanup is warranted. The cleanup and disinfection requirements proposed in the NOIA are intended to ensure that bypasses are dealt with appropriately; thus, they will not be changed in the final amendments.

The purpose of subrule 63.6(2) as proposed in the NOIA is to specify what information the department needs for approval of an unanticipated bypass. The department did not intend to imply that the permittee must provide any additional information requested by the department concerning an unanticipated bypass. Thus, subrule 63.6(2)c has been removed from the final amendments. In addition, 63.6(4) has been modified from the NOIA to require only the submission of additional information concerning the steps taken to minimize the effect of a bypass, rather than any information on the bypass.

Comment #10 indicates that public notice should not be required for bypasses as the Federal Code of Regulations does not require it. However, the department believes that the public and downstream users should be informed when a bypass has occurred. Currently, the department often prepares a public notice when a bypass occurs. Such a notice should be the responsibility of the party causing the bypass rather than the responsibility of the department. The language proposed in the NOIA allows the DNR to determine when public notice is necessary, thus many small or precipitation-related bypasses will not require public notice. The NOIA language requiring public notice at the discretion of the department will not be removed from the proposed final amendments.

The bypass language in the proposed final amendment does not include reference to CSO-related bypassing. CSO regulations will not be affected by the proposed final amendments, thus comment #11 is moot. The department decided that the paragraph in the NOIA indicating that voicemail was not an acceptable means of reporting was unnecessary, and this paragraph has been removed from the proposed final amendments. The removal of this paragraph addresses comment #12.

Comments #13 and 14 indicate that bypass events caused by excessive rainfall should be exempted from the twelve-hour bypass reporting requirements. The department disagrees; all bypasses, regardless of cause, need to be reported within twelve hours. It is not always clear whether or not a bypass is precipitation related or not; thus, every bypass should be reported. Frequent bypassing can be an indicator of problems in a collection system or treatment facility and all bypass events must be taken into account when designing or upgrading a collection system or treatment facility. The proposed final amendments will keep the twelve-hour reporting language noted in the NOIA.

The exemptions to the bypass prohibition in the NOIA are not intended to counteract the prohibition as noted in comment #15. The exemptions are from the Code of Federal Regulations, and they provide the owners of treatment facilities and collection systems protection from liability for planned maintenance bypasses and unavoidable bypasses. The department may take enforcement actions against treatment facilities or collection systems when a bypass does not meet the specific requirements in subrule 63.6.

This proposed subrule is not intended to dictate how many bypass may occur in the state, as noted in comment #16. The intent of the subrule is to clarify what constitutes a bypass and the responsibilities of the department, treatment facilities, and collection systems in response to bypass events. We appreciate the support of the proposed anticipated bypass language noted in comment #17.

Recommendation:

It is recommended that the EPC adopt the modified bypass subrule as noted in the final amendments to Chapter 63.

ISSUE: Reporting of any Monitoring not Specified in the Operation Permit

(Chapter 63)

Comments:

A few comments were received indicating that the proposed language in 63.9 should be clarified to state that the additional monitoring required to be included in the calculation and reporting of data should be performed at the compliance monitoring point and in accordance with the analytical procedures in 40 CFR Part 136. The commentors stated that otherwise, the additional data reported would be meaningless.

Discussion:

The department agrees that the NOIA language needs clarification. It was implied that the additional monitoring required to be included in the calculation and reporting of data was to be performed at the compliance monitoring point and in accordance with the analytical procedures in 40 CFR Part 136, but the proposed rule should state this specifically. The proposed final amendments include the phrase “performed at the compliance monitoring point and analyzed according to 40 CFR Part 136” to clarify the intent of the rule.

Recommendation:

It is recommended that the EPC adopt the modified subrule 63.9 as noted in the final amendments.

ISSUE: Twenty-four Hour Reporting

(Chapter 63)

Comments:

A few comments were received indicating that the proposed language on twenty-four hour reporting in 63.12 is overbroad, and the regulated community will not know what it means.

Discussion:

The language on twenty-four hour reporting proposed in the NOIA for subrule 63.12 is identical to the

language in 40 CFR 122.41(6)(ii) and the Standard Conditions of all NPDES permits with one exception: the proposed language details where in the Code of Federal Regulations the list of toxic pollutants and definition of hazardous pollutants can be found. The NOIA language is not overbroad, as it is almost identical to the Code of Federal Regulations and the Standard Conditions.

Twenty-four hour reporting is already required by all NPDES permits, and as such, it should be understood by all permittees. The NOIA language will help to clarify where additional information on toxic pollutants and hazardous substances may be found to assist with the required reporting. The is no need to change the NOIA language on twenty-four hour reporting, as it already provides more clarification than the Code of Federal Regulations and the Standard Conditions in all NPDES permits.

Recommendation:

It is recommended that the EPC adopt the amendments to Chapter 63.12 as proposed in the NOIA.

ISSUE: Costs and Overall Impact of the Proposed Monitoring

(Chapter 63)

Comments:

Eighty-one comments were received that indicated the monitoring for Chapter 63 as proposed in the NOIA would be too costly for the citizens of Iowa. These comments are paraphrased below.

1. Costs would cause a hardship on small communities
2. If rural communities continue to be burdened with costly endeavors there will be no such place as rural communities anymore
3. Our town cannot afford this, people just won't pay their bills
4. The economy is already bad, and things are already difficult for many citizens, this will only increase their burden
5. Our town cannot handle further debt
6. These higher costs are not justifiable
7. Many of our citizens are on a fixed income and cannot afford this
8. The cost increases would put an undo rent increase burden on out tenants that are barely getting by now
9. The new monitoring will easily double if not triple the costs of sampling and testing
10. We would have to purchase al least one new sampler, which is another additional expense, and we will have to purchase these expensive samplers every three to five years
11. Our city is not in the financial position to be able to purchase the equipment necessary to administer the increase in testing
12. The cost of monitoring for facilities subject to the proposed Table II requirements is nearly four times the cost of the monitoring for facilities subject to the proposed Table III requirements
13. Citizens maybe forced out of their homes and have to move to different towns where the sewer rates are lower
14. The high cost of the proposed monitoring could prevent unsewered communities from operating a central wastewater treatment system
15. The proposed changes are a giant step back from all our hard work in finding affordable solutions for the very small communities in Iowa
16. Some municipalities could unincorporate and turn their sewer systems over to the county because the city would no longer be able to afford the high sewer rates
17. Unincorporation of small communities as a necessary response to this rule in order to manage the cost of wastewater treatment does not seem to further the overall goals of the department
18. We cannot endure costly increases in the monitoring of a system that was just recently approved by DNR
19. It won't be long until the ratepayers cannot afford to pick up the tab for new rule requirements anymore
20. Smaller towns are going to be spending their money on unneeded testing instead of upgrading their treatment processes and collection systems
21. The proposed monitoring will hurt our ratepayers who are already struggling with high costs due to DNR regulations

22. Costly additional sampling equipment will probably be required with the new monitoring rules
23. We just did an upgrade and we might have to do another because of the new stream regulations, we cannot afford this on top of those upgrades
24. These rules have the potential to put many municipalities out of compliance, municipalities who have taken good faith actions and put forward large expenditures
25. We have already determined to take the heavy burden of cost to do what is right and move forward with a compliance sewer system, the additional monitoring would force us to place an even larger burden on our people, hurting our community
26. As soon as we meet DNR requirements the rules are changed again
27. The increased costs would deter industries and businesses from entering the state
28. Our money would be better spent complying with existing permit limits
29. Money would be better spent repairing or improving infrastructure (collection systems)
30. Will the DNR help cities pay for the additional monitoring?
31. The DNR should pay for the additional testing if they need the additional information
32. The DNR should send teams around during discharges from lagoons and get the data and proof they want, then the towns won't have to pay for it
33. This appears to be an attempt by the DNR to mandate that all communities do the DNR's "information gathering" at the taxpayers' expense
34. Increased monitoring costs should be absorbed by the DNR if they are not legally mandated by law
35. If additional data is needed to understand how systems operate, we suggest that DNR fund a monitoring program and not place the burden on poverty communities
36. This is an unjustified expense as we have not been shown that there is a problem with our wastewater effluent or our receiving stream
37. It is our understanding that if a system is operating properly, the additional monitoring is an unnecessary additional cost to homeowners
38. Why must additional monitoring now be added for controlled discharge lagoons when the water in the lagoons has not been below standards before?
39. Increased monitoring will not make water quality better, site-specific monitoring should be proposed instead
40. The high cost impact can only be justifies in those instances where systems fail to meet their effluent limits; DNR could then manage those systems without unnecessarily impacting those systems who consistently meet their permit requirements
41. Increasing the monitoring for the towns in Iowa will not reduce the pollution to the streams of the state
42. We fail to see where these tests will improve the operation of any facilities
43. We fail to see that there is a problem with existing systems being in noncompliance
44. There should be a provision for plants that are operating way under their limits to apply for reduced monitoring
45. The base monitoring will never get lower, it will always stay the same

Discussion:

A letter providing information on the proposed rules and requesting the submittal of anticipated cost information was sent out to many cities by the Iowa Rural Water Association and the Iowa League of Cities on September 25th, 2008. This letter included the monitoring tables for Chapter 63 as proposed in the NOIA. We appreciate these entities efforts to inform stakeholders of the proposed rules and to generate comments on the rules. However, important information clarifying the specifics of the proposed monitoring was left out of the letter, leading some communities to misinterpret the proposed monitoring tables and overestimate their anticipated costs. As such, some of the comments included above were made assuming the costs would be much higher than the actual costs of the monitoring proposed in the NOIA.

However, the department agrees that the costs of the monitoring proposed in the NOIA were significant. In order to reduce the costs to the citizens of Iowa, the monitoring in Chapter 63 of the proposed final amendments has been reduced from that in the NOIA. Several significant changes were made to the monitoring tables.

In Table I for Controlled Discharge Lagoons (CDLs), four changes were made from the NOIA. First, the requirement to monitor Total Nitrogen (TN), Total Phosphorus (TP) has been removed for all CDLs. Second, all of the sample frequencies for CDLs have been changed to per drawdown rather than per week or month in order to clarify when effluent sampling is required. Third, the sampling frequency for *e.coli* monitoring for the CDLs with a Population Equivalent (PE) greater than 100 has been changed from once every two weeks to twice per drawdown, so that *e.coli* sampling frequencies will be similar to the sampling frequencies for other parameters. Fourth, with the exception of one-cell CDLs, the monitoring frequencies for the parameters in the less than 100 PE category have been reduced to match the current rules. The monitoring for two and three cell CDLs with a PE of less than 100 will not increase in the final amendments. For one-cell lagoons with a PE of less than 100, a superscript has been added to indicate that the sampling frequencies for Total Suspended Solids (TSS) and Carbonated Biochemical Oxygen Demand ($CBOD_5$) will be twice per drawdown, to allow for better operational control and compliance monitoring of one-cell lagoons as these lagoons do not meet the current wastewater design standards.

The two tables that were proposed in the NOIA for continuously discharging facilities (Tables II and III) have been combined into one table (Table II). The table in the final amendments is similar to the current Table II in Chapter 63. The two proposed tables were combined as the monitoring reductions resulted in identical monitoring for all types of continuously discharging facilities.

The proposed monitoring in the final amendments for Total Nitrogen (TN), Total Phosphorus (TP), and Total Kjeldahl Nitrogen (TKN) has been reduced. The proposed TN, TP, and TKN sampling requirements in the NOIA were added to data to assist the DNR in the development of nutrient water quality standards and TMDLs to insure that appropriate limits are placed in TMDLs and subsequent NPDES permits. Similar results will be achieved with a reduction in the sampling frequency. The proposed TN and TP monitoring in the NOIA for all controlled discharge lagoon facilities and for small continuously discharging facilities has been removed, and the frequency of monitoring for TN, TP, and TKN for the larger continuously discharging facilities has been decreased to half of the frequency proposed in the NOIA. The TN, TP, and TKN monitoring is the major monitoring increase for the large continuously discharging facilities.

The significant cost associated with the monitoring tables proposed in the NOIA for small continuously discharging facilities is the cost of installing new wastewater sampling equipment. Currently, small continuously discharging facilities are not required to take samples of their influent (raw) wastewater and are required to take very few samples of their effluent (final) wastewater. The monitoring tables proposed in the NOIA required new influent wastewater sampling and increased the number of effluent wastewater samples for small continuously discharging facilities, resulting in the requirement to obtain new sampling equipment.

Federal rules require that 85% of total suspended solids (TSS) and biochemical oxygen demand (BOD) be removed during treatment at all wastewater facilities. The 85% removal cannot be calculated without both influent and effluent samples; thus, influent sampling was proposed in the NOIA for small continuously discharging facilities. This requirement cannot be waived as it is a federal requirement. The DNR considered removing the influent samples, but in order to comply with federal rules and determine if these small facilities are complying with their permits, the influent monitoring as proposed in the NOIA and the associated sampling equipment are necessary, and will not be changed in the final amendments.

The monitoring tables proposed in the NOIA increased the amount of effluent samples required for the small continuously discharging facilities, as effluent samples are currently taken infrequently. However, to offset the costs of the required influent monitoring, the effluent monitoring in the proposed final amendments for small continuously discharging facilities has been kept at the levels in the current rule for several parameters. The frequency of the monitoring for ammonia nitrogen and *e.coli* for the less than 100 and 101 to 500 PE categories was not reduced in the proposed final amendments, due to the monthly ammonia limits and *e.coli* geometric mean required by 567 IAC Chapter 61 (Water Quality Standards). The monitoring frequencies for all of the parameters in the 501 to 1000 PE category, with the exceptions of TSS and *e.coli*, were reduced to the levels in the current Table II of Chapter 63. The monitoring frequency for TSS in the proposed final amendments is higher than the current Table II in order to provide better operational control and compliance monitoring, and the *e.coli* monitoring frequency must comply with the Water Quality Standards. The TSS monitoring for the facilities with a PE between 1000 and 15,000 in the proposed final amendments has decreased from that in the NOIA.

Two of the comments on the proposed monitoring indicated that the base monitoring requirements should not be static. The NOIA language in subrule 63.3(5) allows for the modification or reduction of the minimum monitoring requirements at the departments discretion when requested by the permittee. If a permittee can adequately justify their request for reduced monitoring as noted in 63.3(5), the monitoring requirements in the permit can be adjusted.

Recommendation:

It is recommended that the EPC adopt the modified monitoring tables for Chapter 63 as noted in the final amendments.

ISSUE: *E.coli* Monitoring and Six Hour Holding Time

(Chapter 63)

Comments:

Several comments were received that concerned the proposed *e.coli* sampling requirements and holding time. These comments are paraphrased below.

1. Sampling for *e.coli* is not something most cities are equipped to do, the samples will have to be driven to labs
2. The *e.coli* sampling will be a tremendous burden; an employee will have to be away from the treatment plant for 4 to 5 hours on the 15 days per year that *e.coli* sampling is required
3. On a per capita basis, the costs to the small communities if the new *e.coli* monitoring will be significantly larger with relatively small benefits to its citizens; we recommend that monitoring requirements be altered to reflect the size of a community
4. We recommend that DNR adopt a new protocol for *e.coli* testing that allows for increased holding times to minimize the disruption to system management and cost
5. The six hour hold time will require *e.coli* samples to be driven to a lab, resulting in extra emissions from exhaust and more cars on the road
6. It will take time and employees to deliver these samples to a certified laboratory, taking time away from the treatment plant and from staff's other duties
7. The DNR is underestimating the cost and time that it will take for us to comply with the new requirements
8. The six hour drive to the lab for the *e.coli* sampling is absurd with the cost of gas, time, and manpower
9. Operators will be have to be paid for the time and mileage to drive samples to the lab
10. Small communities may not be able to spare the staff to drive the samples to the lab
11. If there have been no outbreaks of *e.coli* in our receiving stream, why do we have to monitor for it?
12. Small controlled discharge lagoons should not be required to monitor for *e.coli*
13. Will there be any allowance for facilities who cannot make the six hour holding time?
14. The gathering of *e.coli* data will lead to another round of more stringent regulations which will further impact our rates

Discussion:

The significant cost associated with the *e.coli* sampling proposed in the NOIA for controlled discharge lagoons is the cost of transporting *e.coli* samples to the laboratory. The sampling method for *e.coli* established in the federal Standard Methods requires a six-hour holding time for all *e.coli* samples. In practice, this means that a bacteria sample cannot be mailed overnight to a laboratory; the sample must be driven to the laboratory so that it is received by the laboratory within the required six hours. In the proposed NOIA, operators of controlled discharge lagoons would be required to spend approximately four hours delivering *e.coli* samples to a laboratory each time a sample is required.

The six-hour holding time requirement for *e.coli* samples is based on federal rule and it cannot be changed. The DNR considered dropping the *e.coli* sampling requirement for CDLs, but the bacteria sampling noted in the NOIA is necessary to ensure that these facilities meet water quality standards. For

several years, the DNR has assumed that well-operated and designed CDLs meet water quality standards. However, there is little data to support this assumption. If the DNR does not have *e.coli* sampling data to prove that CDLs can meet water quality standards, effluent bacteria limits will be necessary in the permits for CDLs. Rather than requiring all CDLs to meet bacteria limits (which would require more sampling), the DNR is proposing to require that CDLs sample only enough to prove that they can meet water quality standards without permit limits. The six-hour holding time for *e.coli* samples will not be changed and the proposed *e.coli* sampling requirement will not be removed from the proposed final amendments in order that CDLs can prove they meet water quality standards according to federal bacteria sampling methods without further sampling or permit limits.

To defray some of the costs associated with *e.coli* sampling for CDLs, the *e.coli* monitoring requirements in the NOIA table for CDLs have been changed in the proposed final amendments to samples per drawdown rather than per month or per week. This will result in less sampling for lagoons that drawdown for more than four weeks.

The *e.coli* sampling requirements for continuously discharging facilities in Table II of the proposed final amendments have not been changed. The requirement to sample for bacteria when a bacteria limit is included in the permit is an existing requirement for continuously discharging facilities. The proposed NOIA changed the bacteria parameter from fecal coliform to *e.coli* and included the six hour holding time for *e.coli*, but these proposed changes are based on a 2005 change in 567 IAC Chapter 61, Water Quality Standards (WQS). Permits that have been renewed in the last year for continuously discharging facilities with bacteria limits already include *e.coli* limits and monitoring, as permit limits are based on the WQS.

In light of the high costs associated with the required six hour holding time, the department is working with testing laboratories across the state to allow for the testing of *e.coli* samples that arrive at a lab within 30 hours. Every reasonable attempt must be made to deliver the samples to the laboratory within 6 hours of collection, but samples received between 8 hours and 30 hours of collection may be analyzed. However, the final results must be flagged as "conditional results" and the reason given on the analytical report. Samples received after 30 hours of collection must be rejected. The department will continue to pursue avenues to change the six hour holding time with U.S.EPA.

Recommendation:

It is recommended that the EPC adopt the modified monitoring tables for Chapter 63 as noted in the final amendments.

ISSUE: Total Nitrogen, Total Phosphorus, and Total Kjeldahl Nitrogen Monitoring

(Chapter 63)

Comments:

Several comments were received that questioned and were in opposition to the proposed monitoring for Total Nitrogen (TN), Total Phosphorus (TP), and Total Kjeldahl Nitrogen (TKN). These comments are paraphrased below.

1. General public should not pay for the DNR to gather data
2. If DNR needs this information, they should gather it and pay for it themselves
3. DNR should eliminate the monitoring requirements for TN and TP
4. The argument that we need this information to develop standards and rules is valid, but should not be done at the expense of the residents of the small communities
5. Small communities should not have to bear the burden of developing new standards for nutrients
6. It is premature for DNR to require all wastewater treatment facilities regardless of size to conduct TN and TP monitoring when the imposition of the yet-to-be defined nutrient standards may only apply to major dischargers
7. Instead of imposing TN and TP requirements, the DNR should establish an empirical data collection effort funded by the general fund or other monitoring dollars
8. This information is not necessary to protect the environment

9. What is DNR going to do with the information it obtains on TN and TP if there are no limits established?
10. The DNR needs to set standards for these parameters before imposing new monitoring requirements
11. It is not necessary to add monitoring for TN and TP as there are no standards for these pollutants
12. Proposed TKN monitoring is excessive and will be costly
13. These analytes don't have any standards and are not included in our current permits, so they should not be in future permits
14. If there is no phosphorus present in the receiving stream, why do we have to sample for it?
15. The major contributors of nitrogen and phosphorus to the streams in Iowa are non-point source dischargers, not municipalities; thus, municipalities should not have to pay for additional TN and TP monitoring when they are not causing the problem
16. Most major cities have voluntarily monitored for TN and TP in the past and would do so again in the future
17. Since there are no effluent limits for TN and TP, the cost to monitor is unnecessarily burdensome to cities
18. Why not only require TN and TP monitoring for those treatment plants that are on streams that will have a TMDL?
19. TN should be removed and the two separate parameters of nitrate + nitrate and TKN should be added for the final effluent
20. TN footnote does not adequately detail how to analyze TN

Discussion:

As noted in the response for the issue of costs and overall impact of the proposed monitoring, the proposed TN and TP monitoring for all controlled discharge lagoon facilities and for small continuously discharging facilities has been removed from the proposed final amendments, and the frequency of monitoring for TN, TP, and TKN for the larger continuously discharging facilities has been decreased to half of the frequency proposed in the NOIA. This removes the nutrient sampling burden from small communities.

The department considered requiring TN and TP only for those facilities on streams with nutrient impairments as noted in comment #19, but after consultation with the TMDL section, it was determined that only a small percentage of the state is not in a watershed with a potential nutrient impairment. Restricting the TN and TP monitoring in this fashion would exclude very few facilities.

The footnote for TN and TP analysis was expanded in the proposed final amendments to detail how TN will be analyzed and how both TN and TP shall be reported. This information will be included in NPDES permits. The alteration of the footnote addresses the concerns in comments #19 and 20.

Recommendation:

It is recommended that the EPC adopt the modified monitoring tables for Chapter 63 as noted in the final amendments.

ISSUE: Construction Permit for Wastewater Disposal Systems

(Chapter 64)

Comments:

One comment was received indicating that a defined term should be used in the subrule stating that no person shall construct, install or modify any wastewater disposal system or part thereof… without, or contrary to any condition of a construction permit.

Discussion:

The proposed NOIA included the definition for the term "disposal system" from Iowa Code 455B.171. Subrule 64.2(1) as proposed in the NOIA uses the term "wastewater disposal system". In this subrule, the

word “wastewater” modifies the defined term “disposal system”. There is no need to definite “wastewater disposal system” or to alter the subrule to include a different term.

Recommendation:

It is recommended that the EPC adopt the language in subrule 64.2(1) as proposed in the NOIA.

ISSUE: Privately Owned Pretreatment Facility

(Chapter 64)

Comments:

One comment was received indicating that the last sentence proposed in 64.2(8)“c”, which states “however, the department may require that the design basis and construction drawings be filed for information purposes” is unclear and should either be deleted or reworded.

Discussion:

The final sentence in the NOIA language for 64.2(8)“c” is intended to allow the department to request submittal of the design basis and construction drawings for an unpermitted private pretreatment facility if any question arises as to the effectiveness of the pretreatment system. As such a system will not require a construction permit from the department, the only way to obtain the design information will be to request it. The department feels that the final sentence of the NOIA rule clearly states that design information may be requested of privately pretreatment facilities when necessary. The sentence does not need to be rewritten or deleted.

Recommendation:

It is recommended that the EPC adopt the language in subrule 64.2(8)“c” as proposed in the NOIA.

ISSUE: Moving the Requirement to Obtain a Permit for Concentrated Animal Feeding Operations

(Chapter 64)

Comments:

A few comments were received indicating that the requirement for discharges from concentrated animal feeding operations (CAFOs) to obtain a permit should remain under the operation permit requirements in 64.3 rather than the NPDES permit requirements in 64.4, because an operation permit applies to discharges to waters of the state, and an NPDES permit only applies to discharges to navigable waters. The commentors stated that CAFOs discharge to and impact various types of waters, not just navigable waters, so the CAFO permitting requirements should remain under the operation permit requirements section.

Discussion:

In the NOIA, several types of facilities were moved from 64.3(1), which states that operation permits are not required for certain facilities, to 64.4(1), which states that NPDES permits are not required for certain facilities. These facility exemptions were moved because they are from the Federal Code of Regulations, and they apply to NPDES permits, not to state operation permits. The NOIA language indicates that the discharges from the CAFOs are defined in 40 CFR 122.23. The Federal Code of Regulations discusses NPDES permits, thus the exemptions from the federal code belong under the NPDES exemptions, rather than the state operation permit exemptions. The final CAFO exemptions will remain under the NPDES exemptions in the proposed final amendments.

Recommendation:

It is recommended that the EPC adopt the language in subrules 64.3(1) and 64.4(1) as proposed in the NOIA.

ISSUE: Interested Persons Requesting Permit Changes

(Chapter 64)

Comments:

Several comments were received on the provision in 64.3(11) concerning requests from interested persons to amend, revoke and reissue, or terminate permits. These comments are paraphrased below.

1. Is there a good reason or cause for someone on the street to want to revoke a permit?
2. We ask that this language be stricken
3. The words "interested person" are not defined, leaving the term open for interpretation
4. If a citizen has concerns with a permit, they should be voicing those during the public comment period
5. This proposed rule is unduly burdensome for DNR staff as it would force them to formally respond to all requests from interested persons regardless of whether the individual's concerns have merit
6. Cause for changing a permit includes "any change in condition" and this is very ambiguous
7. Permit holders need to know exactly what will lead to the revocation, reissuance, or termination of their permit
8. We request that the involvement of "interested persons" in the process be limited to NPDES permits and not include operation permits

Discussion:

The NOIA language allowing interested persons to request permit changes is from 40 CFR 124.5. This language cannot be removed from the proposed final amendments, as it is required by federal code. The term "interested person" is not defined in federal code; it is very broad intentionally so anyone may request a permit change. The department agrees that this language will increase the workload of NPDES permit writers, but it is a necessary increase. The subparagraph in the NOIA that states cause includes "a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge" is in the current Chapter 64 rules concerning the revocation of permits. This sentence is self-explanatory.

The causes that can lead to a revocation, reissuance, or termination of a permit are clearly noted in the NOIA language and in the cited sections of the Federal Code of Regulations. In addition, no permit will be changed for cause without prior notification of the permittee. The current language in subrule 64.3(11) cites individual operation permits. This language was not changed in the NOIA, and the department intends for the proposed final amendments to apply to both operation and NPDES permits.

Recommendation:

It is recommended that the EPC adopt the language in subrule 64.3(11) as proposed in the NOIA.

ISSUE: New Source Regulations Should Address Trading

(Chapter 64)

Comments:

A few comments were received indicating that the proposed language in 64.3(12)"c" should be clarified to reflect that the use of trading is not precluded in the issuance of a permit to a new source or new discharger.

Discussion:

The NOIA language in 64.3(12)"c" indicates that no permit may be issued to a new source or new discharger if the discharge from its construction or operation will cause or contribute to a violation of water quality standards, and includes language describing certain demonstrations that must be made by a new source or new discharger proposing to discharge to a water segment that does not meet applicable water quality standards. The NOIA language does not reference trading in regards to new sources or new dischargers, as trading is not currently used in Iowa, and trading is not referenced in any other existing or

proposed wastewater rules. If trading becomes a viable option for new sources and new dischargers in Iowa, the language in Chapter 64 can be modified to address trading for new sources or new dischargers.

Recommendation:
It is recommended that the EPC adopt the language in subrule 64.3(12)"c" as proposed in the NOIA.

ISSUE: Permit as a Shield
(Chapter 64)

Comments:
A few comments were received that indicated that subrule 64.4(3) that sets forth the permit as a shield provision should be clarified to reflect that compliance with a permit is also compliance under state law.

Discussion:
The NOIA language states that compliance with a permit is compliance with certain provisions of federal law. The department agrees with the commentors that it is appropriate to modify this language to include a statement that compliance with a permit is also compliance with certain provisions of state law. The proposed final amendments will include a phrase indicating compliance with a permit during its term constitutes compliance with limitations and standards set out in IAC 567 – Chapters 61 and 62.

Recommendation:
It is recommended that the EPC adopt subrule 64.4(3) as modified in the final amendments.

ISSUE: Distribution of Permit Rationales to Permit Applicants
(Chapter 64)

Comments:
One comment was received indicating that according to 40 CFR 124.8, the applicant should receive all permit related documents, including the permit rationale, without request.

Discussion:
The department acknowledges that neither the current or the NOIA rules state that the permit rationale (fact sheet) shall be sent to the applicant; nor do the rules state that the rationale shall not be sent to the applicant. It is not the intent of the department to withhold any permitting information from an applicant. However, the majority of permit applicants have not indicated an interest in receiving the permit rationale. In the interests of decreasing the amount of materials mailed by the department, permit rationales have not regularly been mailed to the applicant. However, all draft permits and permit rationales are available on the department's webpage, so the permit rationales are currently available to all applicants without request.

Recommendation:
It is recommended that the EPC adopt the language on permit rationales as proposed in the NOIA.

ISSUE: Reasonable Potential and Antidegradation
(Chapter 64)

Comments:
One comment was received concerning the proposed new paragraph in 64.7(2)"g" that states "limitations must control all pollutants or pollutant parameters which the director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any

water quality standard…" The commenter stated that this language described part of the draft antidegradation analysis without using the word "antidegradation", that his rule is vague, and that the inclusion of this paragraph before the finalization of the proposed antidegradation procedure is premature.

Discussion:

This NOIA language is from 40 CFR 122.44(d)(1), and it is intended to describe the use of a reasonable potential analysis of pollutants in the development of effluent limits in NPDES permits. A reasonable potential analysis may be a part of an antidegradation analysis, but the antidegradation analysis focuses on reasonable alternatives to a discharge, not on reasonable potential analyses. There is no reason for the adoption of the NOIA language to be delayed by the proposed antidegradation procedure.

Recommendation:

It is recommended that the EPC adopt the language for 64.7(2)"g" as proposed in the NOIA.

ISSUE: Denial of Permit Reissuance

(Chapter 64)

Comments:

A few comments were received discussing the proposed language on substantial compliance in the section of the rules discussing the reissuance of NPDES permits. The comments are paraphrased below.

1. The definition of substantial compliance proposed for Chapter 64.8(1)b is not appropriate and is much too broad
2. An operation or NPDES permit should not be denied because a facility is not in substantial compliance as the term is proposed to be defined
3. The use of the significant non-compliance language from the federal code of regulations in this section of the rules is inappropriate
4. The substantial compliance determination for controlled discharge lagoons should include an exemption for rainfall events
5. It should not be assumed in the substantial compliance language that a lagoon that has not discharged for more than 24 months is leaking

Discussion:

The current language in 567 IAC Chapter 64 indicates that an applicant must submit information to show that they have substantially complied with the existing NPDES permit before the permit can be reissued. The amendments proposed in the NOIA clarified substantial compliance, because current rule language does not specify what constitutes substantial compliance with permit conditions. The proposed final amendments to Chapter 64 will not include the NOIA language on substantial compliance at this time because the department is considering altering the language concerning permit reissuance. When a final decision is made on how to factor substantial compliance into the permit reissuance process, Chapter 64 will be revisited.

Recommendation:

It is recommended that the EPC adopt the final amendments to Chapter 64 as modified to exclude the substantial compliance provisions.

ISSUE: Rainfall Intensity-Frequency-Duration Curve

(Chapter 64)

Comments:

A comment was received indicating that the proposed Rainfall Intensity-Frequency-Duration Curve at the end of Chapter 64 should be replaced with region specific charts. The commenter indicated that rainfall patterns differ from region to region within the state and the use of a statewide table for design standards will not accurately reflect regional systems, leading to more costly systems than would otherwise be required.

Discussion:

The current Rainfall Intensity-Frequency-Duration Curve at the end of Chapter 64 is illegible. The curve proposed in the NOIA was based on the same data as the current curve, and it is for all purposes identical. The new curve was included in the NOIA simply so a legible version of the curve would be available. At this time, the department does not intend to alter the use of the curve, so there is no reason to replace the curve with region-specific charts.

Recommendation:

It is recommended that the EPC adopt the Rainfall Intensity-Frequency-Duration Curve as proposed in the NOIA.

ISSUE: Comments Regarding the Rulemaking Procedure

Comments:

Several comments were received regarding the rulemaking procedure and the public comment period associated with the NOIA. These comments are paraphrased below.

1. NOIA provided little detail of significance of changes, why the changes are being made, and what the impact will be
2. The regulated community has been left to hire attorneys and engineers to determine the impact of the proposed rule

Discussion:

Before the formal rulemaking process for these proposed amendments began, the department held nine external stakeholder meetings in early spring of 2008 that were open to any interested stakeholders. Notice of these meetings was given on the wastewater listserv and several of the attendees distributed notice of these meetings to their constituents. After the formal rulemaking process began, the department informed the public of the proposed amendments and public hearings on several occasions. A letter containing the anticipated rulemaking schedule and information on where to view the proposed amendments was mailed to all permittees in the state in April of 2008. Eight presentations were given at state and regional wastewater meetings including Iowa Water Pollution Control short courses during the summer and fall of 2008. The informational item, the NOIA, and the public hearing schedule were posted on the DNR website. The proposed amendments and public hearings were discussed in the water quality listserv and the EcoNewsWire sent out by the DNR in September of 2008. The public hearings were also posted on the State of Iowa calendar. An additional stakeholder meeting was held in November of 2008, and the Informal Regulatory Analysis was placed on the DNR website in December 2008. The NOIA and public hearing information were also published in Iowa Administrative Rules Bulletin.

Recommendation:

The NPDES Section will give consideration to these comments and will attempt to further clarify the impacts of any future rule changes.

ISSUE: Comments that do not Directly Pertain to the Proposed Rules

Comments:

Some of the comments received during the public comment period did not directly pertain to the proposed rule changes. These comments are listed below.

1. The requirement for Treatment Agreement (TA) submittal 180 days in advance and 180-day advance notice for industrial user discharge to a treatment facility should be revisited
2. Agricultural storm water discharges (including soil conservation drainage structures) are exempt from Clean Water Act permit requirements and should be specifically exempted from state operating permit requirements
3. Specific references should be added that clarify that 567 IAC Chapter 65 applies to livestock farms and animal feeding operation construction permits and that the proposed requirements for point source discharges do not apply to livestock farms
4. A rule should be added stating that DNR cannot require an operating permit for livestock farms unless it meets the 567 IAC Chapter 67 rules
5. The department should recognize that any precipitation related discharges after land application of manure are considered to be agricultural storm water under section 502 of the Clean Water Act
6. We request clarification of the federal law in the wastewater rules to recognize that activities such as USDA approved conservation practices are not required to obtain NPDES permits
7. Clarification of definitions of water discharges needs to be explained and identified before anything is done regarding "storm water discharge" rules are passed
8. DNR should establish and advisory system to alert treatment facilities and design engineers of any upcoming DNR requirements that could occur in the next five or ten years so systems do not have to be redesigned right after an upgrade
9. If POTWs are getting all of these new monitoring regulations, non-point sources should be too
10. It is unjust and inequitable not to enforce these same monitoring requirements on agriculture and other non-point source discharges
11. All of the new wastewater parameters that are being required are chemicals that are all applied to agricultural areas and urban areas for fertilizer; too bad the DNR can't start addressing some of these issues and stop going for the easy point source entry point

Discussion:

The 180-day advance requirements for TA submittal and notification of industrial user discharge to a treatment facility were included in the current rules to allow the department adequate time to amend an NPDES permit to reflect TA or industrial contributor changes. Permit amendments caused by TA or industrial contributor changes are usually major amendments requiring public notice. In order for a major permit amendment to be finalized before an industry discharges to a treatment facility, the department needs 180-day advance notice. These requirements will not be revisited at this time.

The NOIA language for subrule 64.3(1) states "Except as otherwise provided in this subrule, in 567—Chapter 65, and in 567—Chapter 69, no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the director." This section of the NOIA does not require state operation permits for agricultural storm water discharges, as these discharges are not "disposal systems" as defined in the proposed amendments. Not change needs to be made to the proposed final amendments based on comment #3.

Comments #3 and 4 indicate that specific reference to 567 IAC Chapter 65 should be added to the wastewater rules. Subrule 64.3(1) states that "Except as provided otherwise in this subrule and in 567—Chapter 65, no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the director…" In addition, 64.18 states "This chapter shall apply to all waste disposal systems treating or intending to treat sewage, industrial waste, or other waste except waste resulting from livestock or poultry operations. All livestock and poultry operations constituting animal feeding operations as defined in 567—Chapter 65 shall be governed by the requirements contained in

Chapter 65." The wastewater rules already contain specific references to Chapter 65; no additional reference is needed at this time.

No definition for the term "agricultural storm water discharge" was proposed in the NOIA. Comment #5 indicated that the department should recognize that certain discharges qualify as agricultural storm water discharges, but as this term is not included in the final amendments, the department will take no action on this suggestion in this rulemaking.

This rulemaking does not address activities such as USDA approved conservation practices. While comment #6 may be a valid request, the final rule will not be changed to incorporate language on approved conservation practices. The wastewater rules may be reopened in the future to address these activities, if necessary.

The NOIA was not intended to significantly alter the departments' storm water regulations, and the term "water discharges" is vague. The NOIA provided several definitions; "water discharges" does not need to be defined in the wastewater rules. Comment #7 does not directly relate to the proposed final amendments.

Some commentors indicated that the department should place new requirements ad restrictions on non-point sources, as they contribute pollutants to state waters. The wastewater section of the department does not establish requirements for non-point source dischargers, and these comments do not directly relate to the proposed final amendments.

Recommendation:

Since these issues are not directly relevant to the proposed rules, no rule modifications are recommended.

APPENDIX:
Commentators

Following is a list of individuals and organizations that commented on the proposed wastewater fees during the public comment period. The commentators are grouped into similar categories and are listed in no particular order.

Government Officials:
Jim McElvogue, Superintendent, City of Ames WPC
Leona Schmitz, Councilwoman, City of Arcadia
Wastewater Superintendent, City of Audubon
Jim Decker, Operator, City of Balltown and City of Sherrill WWTP
Mayor, City of Badger
Chet Claussen, Wastewater Superintendent, City of Bellevue
Lee Miller, City of Bode
Craig Giddings, City Superintendent, City of Burt
Stephen Hershner, Utilities Environmental Manager, City of Cedar Rapids WWTP
Elizabeth Biwer, City Attorney, Clearfield
Richard Sampson, Mayor, City of Colesburg
Wastewater Operator, City of Conesville WWTP
Warren Woods, Mayor & Mike Taylor, City Administrator, City of Creston
Randy Danielson, City Clerk, City of Dayton
Dennis Ryan, Interim Public Works Director, City of Davenport
Wastewater Manager, Denison Municipal Utilities
Chris Chapman, Mayor, City of Derby
William Stowe, Assistant City Manager, City of Des Moines
Larry Hare, Regulatory Compliance Team Leader, Royce Hammitt, & Rebecca Nott, Environmental Specialist, Des Moines Metro WRA
Sandra Holl, City Clerk, City of Dolliver
Gary Coffman, Water/ Wastewater Superintendent, City of Earlham
Sharon Ann Irwin, City Clerk, City of Early
Kelly Haskin, Utility Superintendent, City of Eldora
William Pfister, Mayor, Rhonda Dales, City Clerk, Sarah Schim, Councilwoman, Sara Strong, Councilwoman, & Bob Frieden, Councilman, City of Elgin
Phillip Silker, Mayor, City of Epworth
Superintendent of Public Works, City of Farley
Paul Boock, City Clerk, City of Forest City
Ernie Vieth, City of Grimes
Douglas Melchert, Superintendent, Hopkinton WWTP
Mayor & City Council, City of Humeston
Amiee Hanson & Dave Elias, City of Iowa City WWTP
Jim Chambers, City of Keosauqua
Dick Schrad, City Manager, Knoxville
Steve Rowe, Operator, City of Letts WWTP
Jerry McDonald, Mayor, Kristi Schiebel, City Clerk, & Garnet Small, Councilman, City of Liscomb
Joseph Collins, Wastewater Superintendent, City of Livermore
Jeff Kleinow, City of Luana
Curt Meiner, Superintendent, City of Manchester WWTP
Brian Wagner, City Manager, City of Maquoketa
Maryanne Trudo, Clerk, City of Marquette
Russ Nelson, City of Mediapolis
John Freeland, Mayor, City of Mount Pleasant

Tom Schofield, Councilman, Kathy Goutinger, Councilwoman, Stephanie Alhes, City Clerk & Leonard Mellick, Public Works Superintendent, City of New Albin
Tim Angell, Superintendent, City of New Hampton WWTP
Roger Gries, Assistant Superintendent, City of Onawa WWTP
James Lack, Mayor, City of Orchard
Glenda Rassmussen, City Clerk, & Terry Parker, Wastewater Superintendent, City of Otho
Joseph Helfenberger, City of Ottumwa WWTP
James Weydert, Mayor, City of Peosta
Marcelene Simbro-Woodhouse, Councilwoman, Clifford Vos, Councilman, Lucille Cossel, Councilwoman, Bobbie Mohler, City Clerk, & Galen Modlin, Operator, City of Reasnor
Mayor Madren, Dustin Belgarde, Public Works Director, and City Council, City of Redfield
Stephen Cleary, Mayor, Rickardsville
Connie Gloede, Mayor, City of Ricketts
Steve Miller, Mayor, City of Rinard
Phil Heinlen, Mayor, Kelly Smidt, City Clerk, & John Hepp, Councilman, City of Rockwell City
Gloria Gunderson, Mayor, & Dave Sandvig, Pubic Works Director, City of Rolfe
Pam Virelli, Mayor, City of Royal
Amber Thompson, Councilwoman, City of Sigourney
Michael Klimesh, Mayor & Michael Schrant, Operator, City of Spillville
Kevin Jacobson, City of Story City WWTP
Rachel Cahill, City Manager, City of Stratford
Michael Tripp, Utility Superintendent, City of Treynor
Dale Prebeck, Public Works Director, City of Templeton WWTP
Brad Roth, Mayor, City of Wayland
Rick Hoppe, City of Wall Lake
David Clark, City of West Liberty
Ron Chock, Mayor, & Steven Gunderson, Wastewater Superintendent, City of Woodward

Cities:
City of Sutherland; City of Collins; City of Lamoni; City of Essex; City of North English; City of Harcourt; City of Elkhart; City of Gilbert; City of Centerville; City of Fairbank; City of Marcus; City of Alta; City of Walnut; City of Riceville; City of Melcher-Dallas; City of Farragut; City of Menlo; City of Vincent; City of Woolstock; City of Villisca; City of Malcom; City of Swaledale; City of Shellsburg; City of Camanche; City of Oto; City of Mechanicsville; City of Galva; City of Britt; City of Lovilla; City of Algona; City of Kamrar; City of Alden; City of Primghar; City of Anamosa; City of Massena

Sanitary Sewer Services:
Rhonda Guy
Dennis White, PeopleService
Jade Wilcoxon, General Manager, RWRWA
Kelly Whitacre, Iowa Lakes Regional Water
Kevin Moler, Superintendent, Clear Lake Sanitary District

Consulting Engineers:
Gregory Sindt & E. Robert Baumann, Bolton & Menk

Non-Profit or Trade Organizations:
Christina Gruenhagen, Government Relations Counsel, Iowa Farm Bureau Federation;

Jim Carroll & Mark Reisinger, State Director, USDA Rural Development
Wallace Taylor, Legal Chair, Iowa Chapter Sierra Club
Jessica Harder, Iowa League of Cities
Emily Piper, Iowa Rural Water Association
Monte Shaw, Executive Director, Iowa Renewable Fuels Association

Businesses:
Roger Overton, Operator & Robert H. Wolf, President, Lake Ridge Mobile Home Park;
Mark Eyre, Market Regulatory Manager, Trojan UV;
Douglas Opheim, Environmental Health and Safety Manager, SELC
Michael Freiderick, Systems Operator, Table Mound Park Corporation

Private Citizens:
John Horrell; Jay & Carla Hofland; Barbara Prose; Frank Klahs; Patrick Meade; Randolph Kernen; Paul Alexander; John Fredrickson; Daniel Miers; Steve Woodhouse; Hubert & Virginia Hagemann; Larry Kinsinger; Michael Frame; Bob Watson; Richard Merrill; Brad Fetters; Steven Thompson; Herbert Scott; Jeffery Johnson; Al Schafbuch; Gerri McCurdy; Michael Simpson; Karen Havens